



DEPARTMENT OF  
**FINANCE**

ARNOLD SCHWARZENEGGER, GOVERNOR

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June 9, 2005

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your Notice of Request for Additional Evidence for Case No. 04-RL-9723-01 (97-TC-23, Standardized Testing and Reporting [STAR] Program) dated May 27, 2005, the Department of Finance respectfully submits the following information. Specifically, the Commission requested that the Department of Finance submit evidence identifying state or federal law that supports the assertion that school districts are required to use federal Title I and Title VI funds for the STAR program.

*Title I of No Child Left Behind Act*

Under Title I of the No Child Left Behind Act (NCLB), "Improving the Academic Achievement of the Disadvantaged", Section (a)(1) provides the following: "***For any State desiring to receive a grant (Title I) under this part, the State education agency shall submit to the Secretary a plan***, developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this title), other staff, and parents, ***that satisfies the requirements of this section...***" As indicated in our comments submitted on February 24, 2005, and May 9, 2005, and in the Legislative Analyst Office's comments submitted on May 9, 2005, this section includes a provision (1111(b)(2)(A)) that requires states to establish a single statewide assessment and accountability system for all public school students. In addition, Section 1111(b)(2)(A)(i) requires that each state accountability system "be based on academic standards and academic assessments." Further, Section 1111(b)(2)(B) requires each state to demonstrate what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, based on those academic assessments. Finally, Section 1002(a) provides the authorization of appropriations to local educational agencies for the purpose of carrying out Part A of Title I, which covers the aforementioned sections and requirements *and does not allow their expenditure for any other purpose*. Therefore, Title I funds are clearly provided for school districts to utilize for the STAR program, which is the central element of the State's assessment and accountability system used to satisfy the federal requirements under NCLB. Without the program, the State would not be in compliance with federal law and therefore, would jeopardize its receipt of federal Title I funds.

*Title VI of the No Child Left Behind Act*

Under Title VI of NCLB, titled "Flexibility and Accountability", Section 6111 provides that the grants be available for states to enable them to "pay the costs of the development of the additional State assessments and standards required by section 1111(b)", which is referenced above under Title I. Section 6111 also provides that the grants be available, "if a State has developed the assessments and standards required by section 1111(b), to administer those assessments or to carry out other activities described in this subpart and other activities related to ensuring that the State's schools and local educational agencies are held accountable for results, such as the following: (A) Developing challenging State academic content and student

academic achievement standards and aligned assessments in academic subjects for which standards and assessments are not required by section 1111(b)..." We believe this Title VI language supports our assertion that school districts are provided federal Title VI funds for the STAR program.

The 2004 Budget Act

Item 6110-113-0890 of the 2004 Budget Act (Chapter 208, Stats. 2004), which contains the local assistance appropriations for federal Title VI monies, includes the following provision:

"Provision 11. Funds provided in Schedules (2), (3), (5.5), and (7) shall first be used to offset any state-mandated reimbursable cost that otherwise may be claimed through the state mandates reimbursement process for the Standardized Testing and Reporting Program, the California High School Exit Exam, the California English Language Development Test, and the California Alternate Performance Assessment, respectively. Local education agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules."

Additionally, we note that Item 6110-113-0001 of the 2004 Budget Act, which contains the General Fund local assistance appropriations for the various state assessments, includes an identical provision also applicable to the STAR program. While such provisions explicitly requiring an offset do not appear in prior Budget Acts, these two Budget Act item numbers have clearly provided annual appropriations for apportionments to local districts for these programs.

Funds provided to offset costs

Notwithstanding our belief that the STAR program is federally mandated, and to the extent the Commission does not find that **total** state funds provided for the STAR program (provided in our comments submitted on February 24, 2005) must be used as offsets against any costs resulting from activities found by the Commission to be state-mandated in excess of the federal statute, then it is our position that the local apportionments for STAR, at minimum, must be considered as offsetting revenues to such costs. Apportionments are unrestricted amounts provided to districts for their specific program costs, such as contractor test form student pre-identification services or having the demographic information on student answer documents hand-coded within the district. These apportionments cover costs that are above and beyond the State Department of Education's statewide contract with test contractors, which in itself also avoids assessment development costs at the local level, as discussed in our previous correspondence. The table below provides the statewide apportionment amounts provided for the STAR program through the annual Budget Act from combined state General Fund and federal sources:

Fiscal Year	Statewide Apportionment
1997-1998	\$29,890,660
1998-1999	\$33,485,454
1999-2000	\$10,828,684
2000-2001	\$11,440,358
2001-2002	\$11,492,175
2002-2003	\$12,280,129
2003-2004	\$12,458,634
2004-2005	\$12,524,074

Again, notwithstanding our belief that the STAR program is federally mandated, should the Commission disagree, the availability of these apportionment amounts must be considered offsetting costs, especially since these amounts are unrestricted and were specifically provided to cover school district costs associated with the STAR program.

Other Comments


In its Notice of Request for Submission of Additional Evidence, the Commission also requested that the State Department of Education submit evidence documenting federal Department of Education penalties or other consequences of failure to comply with federal law, including the NCLB testing requirements. We also would like to weigh in on this issue, and we therefore respectfully submit the attached two letters, summarized below, documenting instances involving the States of Minnesota and Texas, where the US Department of Education withheld funds for noncompliance with relatively minor federal NCLB requirements. We would note that no other State receives as much NCLB funding as California, at either the state or local level.

**Minnesota.** Section 1111(b)(2)(C)(iv) of NCLB requires that a State's definition of adequate yearly progress (AYP) measure the progress of its schools based primarily on academic assessments. The State of Minnesota was penalized in 2002-03 for not using school year assessment data as the primary determinant of AYP for the middle and high school levels. Rather, Minnesota used attendance rate data for middle schools and graduation rate data for high schools as the primary means for making AYP determinations. Consequently, the US Department of Education exercised its authority under Section 1111(g)(2) to withhold ten percent of Minnesota's Title I, Part A administrative funds for the 2002-03 school year--\$112,964, and also indicated it would withhold ten percent of Minnesota's Title I, Part A administrative funds for each subsequent year until Minnesota is in compliance.

**Texas.** As part of the state accountability plans under section 1111 of NCLB, states are required to provide timely decisions about AYP determinations for schools to implement the required provisions under section 1116 before the beginning of the next academic year. While most of Texas' public elementary and secondary schools started the 2004-05 schools year the week of August 16, 2004, the Texas Education Agency did not provide Title I schools with their AYP determinations until September 27, 2004. This delay was in violation of section 1111 of NCLB. As such, the US Department of Education, pursuant to section 1111(g)(2), withheld four percent of Texas' Title I State administrative funds for the 2004-05 fiscal year, totaling \$444,282.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst at (916) 445-0328 or Jesse McGuinn, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

  
Jeannie Oropeza  
Program Budget Manager

Attachment

Attachment A

DECLARATION OF PETE CERVINKA  
DEPARTMENT OF FINANCE  
CLAIM NO. 97-TC-23

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

June 9, 2006  
at Sacramento, CA

  
Pete Cervinka